BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Service Rules for the 746-764 and	)	
776-794 MHz Bands, and	)	WT Docket No. 99-168
Revisions to Part 27 of the	)	
Commission's Rules	)	

To: The Commission

COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

By: _____

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The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), asserts that the record will support the assignment of 6 megahertz paired of the 746-764 MHz and 776-794 MHz band to specialized commercial wireless systems dedicated to providing service to the private land mobile community. AMTA suggests that the remaining spectrum could be made available either to consumer-oriented commercial systems, to the private user community directly for purely internal communications, or even, perhaps, to broadcast or broadcast-like services if the FCC is able to resolve the complex technical issues that would arise in such a shared environment

There is a current shortage of spectrum available to supply the demands of the specialized wireless industry. The instant allocation holds substantial promise as a future home for the specialized commercial wireless industry. Specifically, AMTA notes that the 746-764 MHz and 776-794 MHz band propagation characteristics are well-suited for mobile wireless communications and its proximity to existing allocations presents significant advantages for rapid equipment development and deployment.

The Association recommends that non-consumer commercial spectrum be assigned in blocks of .5 megahertz per license per market and that the geographic service area be defined by economic areas ("EA"). Incentives should be provided for small and minority and women-owned businesses through bidding credits. The Association knows of no evidence that license partitioning and disaggregation offer any real opportunities for such businesses.

The Association believes its proposal herein is entirely consistent with the Commission's concept of "Band Managers" serving the needs of the private wireless user community, as set out in the Notice and in the recent proceeding regarding implementation of the Balanced Budget Act of 1997.

AMTA urges the Commission to utilize its statutory authority to forbear from imposing Title II requirements on non-Commercial Mobile Radio Service ("CMRS") licensees in this, or in any band, and also to forbear from imposing those obligations on CMRS licensees that do not satisfy the definition of "covered carriers" recently adopted in conjunction with both E-911 and number portability requirements.

The Association is concerned about the feasibility of co-mingling broadcast and other wireless services on this spectrum and about the likely timing for fulfillment of the promise presented in this proceeding. The Commission might look to the limited wireless opportunities of the 470-412 MHz band as an example of the likely outcome of such sharing.

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its Comments on the Notice of Proposed Rulemaking in the above-identified proceeding.[1] The Notice requests comment on the FCC's proposed new service rules for commercial licensing in the 746-764 MHz and 776-794 MHz bands that have been reallocated from use solely by the Broadcasting service.

AMTA was a strong proponent for reallocation of the spectrum in question from Broadcasting to a variety of wireless services. The Commission's decision to require television licensees to vacate this band as part of the conversion from traditional analog to digital television service was a necessary reevaluation of the competing needs of wireless services for increasingly scarce spectrum. Having come this far, AMTA urges the Commission to complete its analysis and fulfill its statutory spectrum management obligation.

The instant Notice raises fundamental issues in respect to the tension between allowing licensees the freedom to determine how valuable spectrum will be used, subject only to gossamer-light regulatory constraints, and ensuring that their use of the spectrum will serve the public interest in some tangible respect. The debate is a healthy one. The relaxation of regulatory constraints in recent years has unleashed a torrent of innovative technologies and service offerings. However, the FCC also is properly concerned that unbridled regulatory flexibility not have the contrary effect of permitting harmful interference among users, deterring investment in communications systems or services or technological development, or otherwise not serve the

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[1] Notice of Proposed Rulemaking, WT Docket No. 99-168 (rel. June 3, 1999) ("Notice" or "NPR").

public interest.[2] The FCC's responsibility in this proceeding, as in others, is to balance the benefits of enhanced regulatory flexibility with the need to ensure that the multi-faceted communications needs of all people of the United States are recognized, both as individual, consumers of wireless services, and in their professional, work capacity.[3] In a band such as the one under consideration in this proceeding, with sufficient capacity to accommodate a number of important interests, these goals need not be mutually exclusive.

AMTA believes the record will support the assignment of 6 megahertz paired of the 746-764 MHz and 776-794 MHz band to specialized commercial wireless systems dedicated to providing service to the private land mobile community. The remaining spectrum could be made available either to consumer-oriented commercial systems, to the private user community directly for purely internal communications, or even, perhaps, to broadcast or broadcast-like services if the FCC is able to resolve the complex technical issues that would arise in such a shared environment. In support thereof, the following is shown.

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[2] 47 U.S.C. §303(y)(2).

[3] Notably absent from the Notice is any discussion of the success, or failure, to date of the Commission's previous experiment with this type of flexible regulatory scheme. The Wireless Communications Service ("WCS"), governed under Part 27 of the FCC's Rules which is proposed as a model for the systems contemplated in the Notice, was created in 1997. Licenses were granted on July 21, 1997. Yet the Notice is silent on the subject of whether that approach has been a success; whether it has led to the technological innovations, job creations and other advantages cited to support the instant proposal. Notice at ¶12. Surely a report card should be released on the WCS experiment before additional valuable spectrum is allocated under comparable provisions. At a minimum, information is needed to determine whether the Part 27 protection criteria have proven satisfactory before the Commission adds broadcasting services to the mix of permissible offerings.

I INTRODUCTION

1. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz Specialized Mobile Radio ("SMR") service operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz and 450-512 MHz bands. These members provide commercial wireless services throughout the country. AMTA's members have advised the Association and the FCC repeatedly that the most significant problem they face in developing their businesses is the lack of spectrum for growth. For the reasons described below, AMTA suggests that an optimal use of a portion of this spectrum would be an allocation of 6 megahertz paired for technically advanced, specialized, non-consumer, wireless services that will serve the needs of the private land mobile community in the next millennium.

II BACKGROUND

2. In recent years, the Commission has successfully ensured that wireless communication service is available to the public at large. The Commission has allocated some 270 MHz of spectrum for the development of new wireless services and technologies such as cellular, Personal Communication Service ("PCS"), both broadband and narrowband, Local Multipoint Distribution Service ("LMDS"), WCS, and Enhanced SMR ("ESMR"), designed to serve the consumer public.[4] Because of these Commission initiatives, the individual consumer can select from a variety of mobile and fixed communication options provided on a competitive basis.

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[4] The Commission has allocated 50 MHz to the cellular service, see Report and Order, Gen Docket No. 84-1231, 2 FCC Rcd 1825 (1986); and 220 MHz to emerging technology services in general, including PCS, see First Report and Order and Third Notice of Proposed Rule Making, Docket No. 92-9, 7 FCC Rcd 6886 (1992).

However, while cellular, PCS and ESMR clearly satisfy the needs of the individual customer, they are not necessarily appropriate to meet the more specialized communication demands of the business/industrial/land transportation/public safety users ("private users") that support the business infrastructure of the nation, and that also are increasingly dependent on wireless communications in their day-to-day work environment.

3. Specialized commercial wireless service is characterized by a commercial third party providing private users with access to a higher-capacity, more efficient communications system. The customers of these systems typically are organizations, not individuals, that rely on two-way mobile radio communication to facilitate their primary business activities, but which do not have sufficient manpower and/or large enough fleets to justify owning and maintaining a communication system of their own. The services and the equipment used by customers of two-way radio systems are designed to serve a defined business function. The equipment is manufactured with a focus on durability and reliability, with a premium on uncomplicated features that can be easily understood by vehicle operators and other workers. Typical users include plumbers and electricians, transportation companies, such as shuttle buses, limousines and ambulances, construction companies, service and sales organizations of all types, and even certain local government entities for communicating with employees such as maintenance crews and school bus fleets.

4. These private users are interested primarily in dispatch service, most typically in a one-to-many mode. These systems do not offer, and are not designed or marketed to target consumers interested in, a substitute for or an adjunct to the wired telephone instrument. Interconnection to the Public Switched Network ("PSN") is not usually an essential element to the

communication needs of private users and many systems do not offer interconnection capability at all. Even when they are interconnected with the PSN, that feature usually is ancillary to dispatch communications, is technically unsophisticated, and is neither capable of nor intended to provide toll-quality mobile telephone service. The usual transmission is brief, lasting at most for only a few minutes, and is typically conducted either between a dispatcher and employees on the road or among worker groups, unlike the one-to-one communication that characterizes wireless telephone and paging messages.

5. There also are important differences in the look, feel and purpose of wireless consumer versus business devices. Traditionally, radio equipment typically was hard-mounted in vehicles. Although two-way radios are becoming increasingly portable as service-oriented industries need to take their radios onto their "job sites", the premium in this marketplace segment is not on having the smallest, lightest unit technically achievable. By contrast with mobile phones and pagers, two-way radios are not necessarily sleek, are not required to be "pocket-size", and rarely offer the more advanced, sophisticated messaging and convenience features the consumer public has come to expect from its pocket phones. Two-way radios are not designed to be, and are not perceived by the users as, a luxury or convenience item. Instead, they are a basic, rugged and reliable means of communication that is integral to the coordination of business activities and, in many cases, the protection of life and property. For this reason, the development and maintenance of this service is important to the continued economic development of the United States.

6. There is a current shortage of spectrum available to supply the demands of the specialized wireless industry. The conversion of much of the 800 MHz, and now perhaps the 900

MHz, spectrum allocated to SMR service from traditional, dispatch-oriented operations to inclusion in Nextel Communications, Inc's cellular-like iDEN system may have jump-started competition in cellular service pricing and provided other competitive benefits, but it simultaneously has depleted the supply of capacity available for high-power, high-site commercial systems designed specifically to serve the fleet dispatch user community.[5] As that process continues, and as the interest in dispatch capability continues to grow,[6] it is essential that the Commission and the industry work together to ensure that those more specialized needs of private users will continue to be satisfied.

7. The industry is attempting to do its part. AMTA members are actively engaged in integrating into this market technical efficiencies, including digital technology and narrow-banding, that promise to permit more efficient use of available spectrum as well as providing the data capabilities that quickly are becoming essential to running a successful business. These efficiency enhancements cannot be fully realized, however, if they can be implemented only on already heavily encumbered spectrum. The band at issue in this proceeding presents a unique opportunity for the Commission to complement the industry's efforts by an appropriate allocation of at least prospectively clear spectrum.

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[5] First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, PR Docket No. 93-144, 11 FCC Rcd. 1463 (1995), Second Report and Order, FCC 97-223, 12 FCC Rcd. 19079 (1997), and Memorandum Opinion and Order, FCC 97-224, 12 FCC Rcd. 9971 (1997).

[6] Private Radio Markets and User Trends: 1999, AMTA/The Strategis Group, March 1999.

III REGULATORY FRAMEWORK

8. The Association's members remain committed to serving the private user segment of the wireless marketplace and believe the instant allocation holds substantial promise as a future home for the specialized commercial wireless industry. Its propagation characteristics are well-suited for mobile wireless communications and, as described below, its proximity to existing allocations presents significant advantages for equipment development.

9. The latter is a key factor supporting a specialized wireless allocation in this band. The 746-764 MHz and 776-794 MHz spectrum is closely adjacent to the existing 800 MHz band (806-821 MHz). This proximity undoubtedly will reduce both the time required to develop equipment and the cost of doing so, a savings that is critical when those expenses must be spread over a defined business-oriented customer base, not the entire American, indeed worldwide, consumer public. Moreover, because many other countries also use the 800 MHz band for commercial trunked services, an opportunity to develop and market equipment in a new, adjacent allocation for implementation in the United States could attract interest from a broad range of global manufacturers. This, in turn, would facilitate the development of equipment that is available on a timely basis, dependable and cost effective.

A. Allocation Characteristics

10. AMTA proposes that 6 megahertz paired from this band would be an appropriate amount of spectrum to be assigned to the specialized commercial wireless service. The Association recommends this allocation mindful of the competing interests for wireless capacity. Adoption of this proposal would leave an additional 12 megahertz of paired spectrum (24 MHz total), more bandwidth than many of the PCS licenses recently issued by the FCC and an ample

addition to the consumer wireless spectrum larder.[7]

11. The Association further recommends that this spectrum be assigned in blocks of .5 megahertz per license per market and that the geographic service area be defined by economic areas ("EA"). EAs are designed around urban, suburban and rural traffic patterns which most closely approximate the coverage area of traditional specialized wireless systems.[8]

12. Contrary to the suggestion in the Notice, AMTA is unaware of any evidence to date indicating that spectrum disaggregation and partitioning options have fostered meaningful small business or minority participation in telecommunications. Notice at ¶36. What has worked is a combination of smaller spectrum blocks and geographic areas, as in the 220 MHz auction. If these auction elements were coupled with substantial business bidding credits for genuinely small businesses and limitations on the number of licenses that could be acquired at auction by any entity in each market, the FCC would create a genuine opportunity for these types of applicants. Licenses of the size proposed by AMTA would be equivalent to the original 20 25 kHz channel blocks assigned for 800 MHz SMR use, an amount of spectrum considered optimal in terms of deriving spectrum efficiencies in the band.[9] This is not to say that licensees would be required to deploy 25 kHz channel systems. Technological advances since the original 800 MHz allocation will permit operators to select from among a broad range of technical and operational options,

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[7] FCC Rule § 24.229.

[8] AMTA sees no reason why this spectrum would not count toward a CMRS spectrum cap, assuming the system is interconnected and therefore meets the CMRS definition. This assumes, of course, that such a cap still exists when these licenses are actually issued.

[9] Second Report and Order, Docket No. 18262, 46 F.C.C. 2d 752 (1974).

those best suited to their requirements. Nonetheless, AMTA is persuaded that spectrum blocks of this spectrum and geographic size, in conjunction with an initial "one to a market" limitation, represent an appropriate balance between having sufficient capacity to support a viable business plan without deterring participation by the smaller businesses that have proven highly effective at serving the needs of the specialized wireless community.[10]

B. Performance Requirements

13. Finally, in AMTA's opinion it is not possible to quantify performance, or coverage, requirements in the abstract, that is without knowing what type of service is being provided. It is doubtful that the same standard would be appropriate for mobile versus point-to-point fixed versus point-to-multi-point fixed versus broadcast. That decision must be deferred until the offering(s) itself is identified.

IV BAND MANAGER

14. The Association believes its proposal herein is entirely consistent with the Commission's concept of "Band Managers" serving the needs of the private wireless user community, as set out in the Notice at ¶ 15 and in the recent proceeding regarding implementation of the Balanced Budget Act of 1997.[11] While AMTA intends to comment on the Band Manager approach in more detail in the Balanced Budget Act proceeding, there is no question that the traditional SMR provider and other specialized commercial wireless carriers have served the very

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[10] AMTA assumes that licenses will be awarded by competitive bidding. If the FCC receives congressional authority to use spectrum fees, the agency will need to determine in what circumstances that they would be an appropriate alternative to auctions.

[11] Notice of Proposed Rulemaking, WT Docket No. 99-87, FCC 99-52 (rel. Mar. 25, 1999).

private radio industry needs that Congress has directed the Commission to accommodate. They will continue to do so in an increasingly efficient fashion if spectrum is made available for this purpose under rules that present a viable business opportunity.

V FORBEARANCE

15. One element in creating genuine opportunities for businesses of any size is a rational, pro-competitive regulatory environment. For that reason, and in response to the inquiry in the *Notice*, AMTA urges the Commission to utilize its statutory authority to forbear from imposing Title II requirements[12] on non-Commercial Mobile Radio Service ("CMRS") licensees in this, or in any band, and also to forbear from imposing those obligations on CMRS licensees that do not satisfy the definition of "covered carriers" recently adopted in conjunction with both E-911 and number portability requirements.[13]

16. As an initial matter, it is unclear on what legal basis the Commission would even consider imposing Title II common carrier obligations on non-CMRS, and therefore, statutorily non-common carrier licensees. AMTA assumes that this authority flows, if at all, from the 1996 Communications Act in which Congress first classified all telecommunications carriers as common carriers and then enacted an overly broad definition of telecommunications carriers[14]. Under that definition, all commercial providers of service, whether categorized as CMRS or private mobile radio service ("PMRS") under Section 332(c)(3) of the Act, became subject to common carrier

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[12] 47 U.S.C. §10.

[13] FCC Rule §§ 20.18(a), 52.21(c).

[14] 47 U.S.C. § 3(44).

type obligations. AMTA urges the FCC to use its forbearance authority, if necessary, to correct that anomaly.

17. Additionally, the Association has noted in numerous proceedings the fundamental distinction between covered carriers who serve the consumer marketplace and CMRS providers who do not have (and whose customers do not require) the technical capabilities that would place them in that category.[15] Recent FCC decisions in the E-911 and number portability matters recognize those differences and strike an appropriate balance in protecting the interests of consumers without placing economically devastating, or more likely technically unachievable, burdens on those serving a more specialized, business-oriented market. This same bright line should guide the Commission as it continues to consider which regulatory obligations are necessary to ensure that the public receives essential services at reasonable prices and which can be left to the workings of an increasingly competitive marketplace.

VI SHARING CONCERNS

18. AMTA also must caution the FCC that freedom from destructive interference will be another essential ingredient in attracting potential operators to provide service in this band. In that regard, the Association is concerned about the feasibility of co-mingling broadcast and other wireless services on this spectrum. It is difficult to evaluate the potential for such a problem

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[15] AMTA Petition for Reconsideration, Report and Order ("E-911 Order"), CC Docket No. 94-102, filed September 3, 1996; AMTA Petition for Reconsideration, Report and Order ("RF Order"), ET Docket No. 93-62, filed September 6, 1996; AMTA Petition for Reconsideration First Report and Order and Further Notice of Proposed Rulemaking ("Number Portability Order"), CC Docket No. 95-116, filed **May 15, 1997**; and AMTA Petition for Reconsideration Second Report and Order ("Resale Order"), CC Docket No. 94-54, filed September 26, 1996. AMTA Petition for Declaratory Ruling, CC Docket Nos. 94-54, 94-102, 95-116, ET Docket No.93-62, filed December 16, 1996.

at this stage in the proceeding since it is unclear what types of broadcast services are likely to be implemented and, most critically, under what technical parameters they would operate.

19. The single example to date, the sharing of spectrum in the 470-512 MHz band between land mobile stations and Television Broadcast stations, is instructive.[16] The history of this band indicates that shared use may adversely impact the practical utility of the spectrum for other than broadcast offerings. The protective co-channel and adjacent channel standards designed to prevent interference to television operation severely limited both the number of markets where spectrum in the 470-512 MHz band was made available for land mobile use and even the area in which land mobile operations could be conducted within those markets.

20. To the best of AMTA's knowledge, there have been no reported instances of interference between land mobile and broadcast facilities operating in that band. It is not possible to determine, however, to what extent that result has been due to the continued use of the original TV taboos to define the protection to which TV stations were entitled versus the practical reality that extreme differences in power levels would make land mobile interference to television receivers unlikely, if not impossible. Transplanting 470-512 MHz-like sharing criteria to this band should produce comparable results, both in the positive and the negative sense. If the FCC were to permit traditional-type broadcast services to remain on this spectrum they probably would not be susceptible to interference, but at the cost of severely limiting opportunities for the provision of other wireless services. That result would be antithetical to the core objective of this proceeding and should not be permitted.

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[16] See FCC Rule §§ 90.301-90.317.

VII SPECTRUM AVAILABILITY

21. Finally, AMTA remains concerned about the likely timing for fulfillment of the promise presented in this proceeding. Even if the Commission completes its consideration of the *Notice* in a timely fashion, and even if legislation is enacted compelling the FCC to "fast track" an auction,[17] it still will be years before the broadcast industry will be required to vacate these channels.[18] Longer-term solutions are an essential and too frequently overlooked ingredient in sound spectrum planning. However, AMTA is not yet persuaded that this band will be useable within a time frame that could be considered responsive to the documented spectrum needs of the specialized commercial wireless industry. Thus, the Association also is committed to identifying more immediate prospects for enhanced spectrum utilization in bands unencumbered by television broadcast stations.

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[17] S. 11-22.

[18] See, Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 §3004 (1997), FCC Rule Section 2.106, NG159.

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this July 19, 1999 caused to be hand delivered a copy of the foregoing Comments to the following:

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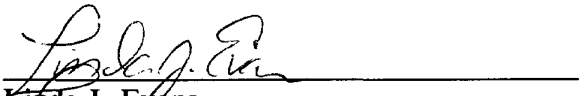

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*Via first-class mail, postage prepaid